A LETTER concerning Sir William Whitlock's Bill for Trials in Cases of Treason, written Oct. 16[illegible] upon the Request of a Friend who is an honest Mem[illegible] of the House of Commons; and now committed to [illegible] Press upon the Solicitation of several who think it [illegible] be of publick Use to let it come abroad before [illegible] next meeting of the Parliament.

SIR,

MY speedy Compliance with your Commands in relation to Sir *William Whitlock's* Bill, is a Demonstration how entire a Power you have over me! And that I may be more distinct and clear in the Delivery of my Thoughts, I shall briefly set them down under the following Heads.

1. I shall consider the Reasonableness and Necessity of having such a Bill.

2. In the next place, I shall consider, Whether this is a proper time to propose and insist upon it.

And in the last place, I shall give some account of the Benefits of such a Bill.

To enforce the Reasonableness and Necessity of having such a Bill, I need only request you to look over the *Trials* that have been in our latter Reigns, wherein you will find that for want of such a Bill some of the most excellent Personages, and our greatest *Patriots*, have [illegible] to Death, and that many [illegible] whereof were Men *harmless* [illegible] have suffered wrongfully. [illegible] not lament, What good [illegible] is not afflicted for the Death [illegible] *Essex* and *Rawleigh*? Can any [illegible] that knows our Laws think [illegible] *Vane* was fairly dealt with? [illegible] *Plunket* ought to have been [illegible] twice? *Sidney* Executed upon [illegible] litude of Hands, and one [illegible] Sir *Thomas Armstrong* without [illegible] before the Outlawry compelled [illegible] coming in? *Ashton* upon presumption [illegible] Treason? And *Anderton* against [illegible] plain Sence of so many Statutes [illegible] Blood of these and many more cry [illegible] Vengeance, and admonish us to provide against such Extravagancies [illegible] after. *Colledge* and *Cornish* call [illegible] for such a Bill. Had such a [illegible] been in force, could the [illegible] *Russel* have dyed for only [illegible]

ng to prevent the wild Attempts of others, and becauſe Sir *Thomas Armſtrong* had viewed the Guards? But it is needleſs to ſet down the ſeveral Inſtances in *other Reigns*, when the Trials under *this* afford but too *pregnant Reaſons* to conclude the *Judges* very *untoward Counſel* for the *Priſoner*, and that *Fury-men* may be byaſſed by Piques and Animoſities, and alſo that *well-meaning* Men of a *Jury* ought to hear the *Law* ſtated by ſuch of the Robe as are not in the *Pay* of the *Crown*; not only becauſe the Bench too often prevaricates, but becauſe the Priſoners are often wearied out, as the Great *Rawleigh* was, with the *Clamorous Harangues* of the *King's Counſel*, and ſo drop their Defence, when their Lungs (which are not ſo well breathed as thoſe of *Pleaders*) fail them.

Another Reaſon which may enforce the Reaſonableneſs and Neceſſity of having ſuch a Bill is, becauſe though our Laws ſurpaſs the Laws of all other Countries in many other Reſpects, yet in *this* they are very defective, inſomuch that it is the Opinion of ſuch as have a greater Inſight into the Laws of other Governments, and our own, than I will pretend to, that there is not *any one Country* where there are any *Legal Trials* at all, but the *Life* of the Subject is better guarded, the method of *Trials* in *Capital Caſes* more equal than in ours; and whoever will look over the manner of Trials here, during the *Saxon* Times, will find we are in ſome great *Fundamentals* degenerated from our ancient Liberties.

I will only add upon this firſt Head an account of the method of *Capital Trials*, as it is amongſt our Neighbours of *Scotland*, who, though ſince they have been made, as it were, a *Province* to our Crown, have in many *eſſential Parts* of it, undergone very great Violations of their *Conſtitution*, have nevertheleſs herein preſerved what may afford us matter of Inſtruction; and therefore let me in a few Words give you their *Forms* of trying ſuch Criminals.

The Priſoner is to receive his *Indictment* with ſound of Trumpet fifteen Days before the Day of his Trial, all Perſons then have *accеſs* unto him, and at the ſame time he is to receive a *Liſt of his Jury*, and of the *King's Witneſſes*, with a *Warrant* to *ſubpœna* all ſuch Perſons to appear whom he ſhall think fit to call for, to prove his good Behaviour, and his Objections againſt the *Jury* or the *King's Witneſſes*.

Upon Application from the Priſoner, The Privy Council gives order to ſuch Lawyers as are named in his Petition to appear as Counſel for him, with Aſſurance unto them, that they ſhall never be called in queſtion for any Thing they ſhall urge in Defence of their Client.

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When the Prisoner comes to his Trial, every Word that is spoken by the King's *Attorney General* to enforce the Indictment against the Prisoner, and every Word spoken by the Prisoner's Counsel for him, is written down by the *Clerks* of the *Court*, and entered upon Record, together with his Indictment, to furnish ground of *Process* afterwards against the *Judges*, if upon Trial it be found that they have judged unjustly; and the Retaliation is carried so far in *Scotland*, that if upon the Review of those Proceedings it is found (after the heat of the Prosecution is over) that the *Judge* was byassed by Interest, Malice or any other Passion, to direct a *Jury* wrong and give a wrong Sentence, then the *Judge*, if alive, shall also be executed; but if the *Judge* is dead, the Heirs of the executed Person shall recover from the Heirs of the deceased *Judge* whatever Damage their *Fortune* sustained upon that *illegal Sentence*.

Before the King's *Witnesses* are examined the Prisoner's *Witnesses* are called and examined upon *Oath*, both as to the Prisoner's *good Fame*, and the *Truth* of his Defences; as also whether they knew that any of the King's *Witnesses* have been dealt with to depone against the *Prisoner*, or have ever *threatned* him any Mischief, or are of *bad Fame*, either of which incapacitates them from being *Witnesses* against the *Prisoner*: Nay, after the *Prisoner* has had all his *Reasons* against the King's *Witnesses*, he may demand, that such as have not been cast by his Evidence should *purge* themselves upon *Oath*, before they give their Testimony, that they bear the *Prisoner* no *Malice*, that they never *threatned* him any *Mischief*, and that they have been never dealt with to depone against him. The *Members* of the *Jury* are liable to the same *legal Incapacities*, and they may be proved against them by *Witnesses*, or their own *Oath*.

The *Judges* are not allowed to speak to the *Jury* before they withdraw. If any Message be sent to the *Jury*, after they are withdrawn, from the *Judges*, *Attorney General*, or any *Person* concerned in the *Government*, the *Prisoner* is acquitted upon his proving it. The *Jury* is never returned to amend their *Verdict*. There must be Two positive deponing *Witnesses* to each Matter of Fact alledged against the *Prisoner*.

I have said all that I will to the *Reasonableness* and *Necessity* of it; and now let us in the next place consider, Whether this is a *proper* Time to propose and insist upon such a *Bill*.

The first Consideration which I shall urge, might have been brought as a Reason for the absolute *Necessity* of having such a *Bill*, which Consideration is this. The P. of *Orange* in his *Declaration* assigned the *Abuses* in *Capital Trials* as one of the *Reasons* of his

his coming over; and what the P. of *Orange* then Declared, he would see amended before he laid down his Arms, is not K. *William* engaged in *Honour* and *Interest*, are not all that design to support this *Government* bound to promote and agree to? And consequently, is it not the *indispensable Duty* of all that wish well to their Majesties, with all Speed to insist upon *proper Bills* for that Purpose? How certain soever it is, that the only *Jus divinum* of our *Monarchs*, and all other *Monarchs* too, is derived from the *Voice of the People*, that *Hereditary Right* is one of Sir *Robert Filmer*'s Dreams, or at most but a *Monkish Fable*, that *Election* is the most *Authentick Title*, and that the *Commissions* of Kings are *de Beneplacito*, I say, however true and certain all these Notions are, yet they will return to their old Bondage, will again fall in Love with *Passive Obedience*, and think they have done *Wrong* to King *James*, if the Prince of *Orange*'s Promises are not kept, and our *Constitution* bettered by the *Change*. And whereas some, otherwise judicious and worthy Men, would have this *Bill* take effect, and got it voted in the House that it should take effect, at the end of this War, and not till then, in my humble Opinion they were much in the wrong; for it looks as if the *Whigs* themselves designed the *Revolution* only to get more Power into their own Hands, and to make use of that Power too, to *revenge* themselves upon their *Enemies*. I love some Men that were concern'd in that *Clause* too well to aggravate this Matter, or to recite the *Reasons* some of them gave for voting for it. *Revenge* is a very ill *Reason* for any Vote in *Parliament*; and if any honest Man has been persuaded to oppose this *Bill*, or consent to that Vote, that they might the better secure this *Government*, I beg leave to inform such mistaken Persons, That all Governments are better secured by letting Twenty *guilty* escape, than by the *illegal Condemnation* of any One Man. The *Blood* of the *Martyr* is the *Seed* of *Civil* as well as *Religious* Opinions; and therefore perhaps through Lenity a Throne is most effectually established, even where Men are, according to the strictest Rules of Justice and Equity, at the Mercy of the Government; but whether that be so or no, I am sure that where the Law is not plain, an *Execution* is a *Defeat* to those that sit at the *Helm*.

Moreover, that the opposition that those who *have*, or *would have Pensions*, whether in the *House of Lords* or *Commons*, have given to Sir *William Whitlock*'s Bill has not in the least preserved our present Establishment, is plain to all that reflect how few there has been, proof against, though this Bill was baffled by such Artifices as little became our *Reformation*, our

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Friends to Reformation. This Bill would have been so far from weakning, that it would have strengthned our Government; for one good Bill gains the King that gives it many Friends, and such Friends as are so by *Principles of Liberty*, and who *therefore* are the *fastest Friends* to an *Elective Crown*. Had the King had, as some wish, Opportunities, by the help of the *Precedents of latter Reigns*, and those *Stretches* of *Prerogative* which we ought to condemn in *this*, to sacrifice some of those who have been *too busy* for K. *James*, there are not any of that Sort of Men who have not amongst us Friends and Kindred, who would have been angry at the *disputed Legality* of the Death of their Relations and Friends. It is not for want of *Blood*, but because we have not obtained *good Laws*, and amongst the rest *THIS*, that our Government is so low: It is because the *WHIGGS* have not kept to, and asserted their *own Principles*, and because K. *William* has fallen into the Hands of *Tories*, and such *Whiggs as he has made Tories*, that all our Affairs are in this Condition. *Illegal Trials* and *Arbitrary Notions* are strange *Recipe's* for a Government that is *it self founded* upon a *Declaration* against them. It is full time to vindicate the Sincerity of the P. of *Orange's Declaration* in this particular; and therefore this is a *proper* time to promote and insist upon such a *Bill*.

But I will not dwell upon this, I will proceed to another Consideration. Either K. *William* is a *good* Prince, or a *bad* one. If a *good* one, 'tis in the Reigns of such we must get Laws against such as are *bad*; and no Man can tell how long will be the Reigns of the *best* of *Princes*. If he is not so affectionate to our Liberties as we could wish, and did expect him, then we have great Reason to endeavour the getting of this *Law*, to guard us against even his own *Male Administrations*. And this is the time to gain this *Law*, because he will give us any Law upon Condition we will provide for his Journey to *Flanders*. Indeed our best Princes have always sold us for our Money the best Commodities, *good Laws*. But even the worst of Princes must give the People *good Laws*, whilst the *House of Commons* keeps the *Purse*, and the *Crown* stands in need of our Supplies.

But further, How can our *Representatives* answer it to their *Constituents*, if they part with such vast Sums, and don't obtain for them a Law, that for so long time, almost the *whole Nation* has thought necessary, for which *twelve Years ago* we would almost have given half our Limbs, and half our Fortunes?

This is the Time to promote *this Bill*, because some will be for it now who never were for a good Bill before. Wise Men should make use of the *Inclinations* and *Interests* of all

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Men. If the WHIGGS were true to their own *former Professions* this Bill might be now carried almost *Nemine contradicente*, more unanimously than most Bills were ever carried. Methinks Men should not care for what Reasons other Men come into *that Sence* which is for the *good* of their *Countrey*, but should make use of all *Factions* and *Parties* to serve it. The Apostle *Paul* rejoiced that *Christ* was preached, *though for By-Ends*, and we should rejoyce that our honest Notions are propagated, let what will be the *Designs* of those that set them on foot, or go in with them.

But farther, if we lose this Opportunity, it is not impossible but we may lose it forever. If we lay hold on this Opportunity, though the Ministers we have, and their ill Management, should lose us our Government, this would questionless be one of those Laws which the first Parliament under King *James* will desire him to ratify and confirm, and at which he expressly hints to in his *last Declaration*, so that we ought to ask it not only for the Safety of *this Government*, but to preserve us in the *next*, if that should happen.

Nay, if the *Jacobites* saw we persued our own Principles now, and would not hurt our *Constitution* to hurt them, all amongst that Sett of Men who have *Sence* and *Generosity*, would rather pity what they thought our Mistakes, than join in our Destruction hereafter: So that if we cannot make the *Tories* wise at present, upon a *Revolution* we may be fairly heard by the *Jacobites*, and may come even to some Accommodation in the Principles of Government; but if we shew that we have no Principles, Men will never be persuaded by *inveterate Enemies*, and such as have appeared to be only *designing Knaves*, as soon as Power was in their Hands.

My last Thought brings me under a great Temptation to expostulate with some of the *Whiggs*, upon other Matters whereby they have *reproached* their *Character*, nor would it perhaps be an *unseasonable Digression*; but I resolved at first to confine my self to a *Letter* of so small a compass as should not weary out your Patience, and therefore will only add a few *Notes* concerning the *Benefits* of *this Bill*.

It is *beneficial* both to the *Crown* and *Subject*.

Any Man, that can reason upon what he reads, may infer from what I have already said, that it is *beneficial* to both; but to make it yet more plain, *this Bill* will in all likelihood very much prevent the shedding of innocent Blood, for which Nations, *generally speaking*, as well as particular Persons reckon even in this World.

Impartial Trials augment the *natural Riches* of a Countrey, which all Men of great Sence and Souls know are the *Numbers* of the Inhabitants. Such *Impartiality* not only augments the

the Numbers by *preserving* those Individuals that would otherwise be unjustly destroyed; but the greater Security the Lives of Subjects are in, the surer is that Government to be crouded with *Inhabitants* from abroad; and *Crouds* of People make *Industry* necessary for Subsistance; and from *Industry* an *abundance* of Trade and Wealth does *naturally flow*, as may be seen by comparing *Ireland* with the *United Provinces*.

Again, such a Law gives an exceeding Reputation to a Government. The Subjects of other Princes, though they should not be able to transport themselves and their Fortunes hither, *will all consent to proclaim our Constitution happy*, and acknowledge that our *Kings* are under a *glorious* and *happy Necessity* of not being imposed upon by the *Malice* of *Ministers*, and the *Corruption* of *Judges*, to take away wrongfully the Lives of their Subjects.

This Law will very much contribute to the Safety of the Prince; for, *after so fair a Trial*, if a Man is found Guilty, and Executed according to the Sentence, his Relations and Friends may *grieve*, but cannot *murmur*.

Before I conclude upon this Head, of the Benefits that the Crown will receive from such a Law, I cannot forbear addressing my self to King *William*, and humbly, tho' earnestly, conjuring him to become as *vigorous* a Solicitor for *this Bill* as his *Enemies* say he has been *against it*. And here I must set before him the Glory of our *Noble* RIGHT the Third, who has obtained as Immortal Praises by his good Laws as his Victorious Arms, and who did leave his Name particularly Great and Memorable, by that Law in the 25th Year of his Reign, wherein he fenced the Subject from the *dubious* and *divers Opinions* of what amounted to *Treason*, and made a Declaration what Offences were to be judged *Treasons*, either *High* or *Petit*, which Law is so often referred to in Acts of Parliament that have been made since his Time, and has made his Name dear and valuable to all honest and worthy Minds, from his down to our Times: Tho' mercenary and corrupt *Judges* have so much interpreted away that Act, that we stand in great need of a new Law to explain and confirm that wise and excellent *Statute*. I wish King *William* would give us such a Law, and give us likewise this Bill of Sir *William Whitlock*'s, that we might be the better for that Law. Such Care, such Condescentions, such Provisions for our Lives and our Liberties, our good Names and our Fortunes would transmit the remembrance of King *William* the *Third* to all future Generations, as our Benefactor, our Deliverer, as one of the best of Princes and the common Father of our Country. My Lord Chief Justice *Treby*, when *Attorney General*, at a Conference with the *Lords*, asserted, that there was nothing

in this Bill but what was originally amongst our Rights. We will not stand upon it as such. We are willing to take this *Law* as a *Grant* from the *Crown*, and not as our *Due*. We would not be put to demand it as a Right, but would leave the Honour and Reputation of doing so acceptable a Thing to him with whom we have shewn but little Inclination to quarrel. However, I must take the Boldness to say, that the Temper and Backwardness we have shewn, whilst his *Tory Parasites* have provoked us, should engage him, or nothing will engage him, to gratify us with so necessary a *Bill* as this for *Regulating of Trials in Cases of High Treason*.

This *Bill* is necessary and beneficial for the Subject; if guarding an innocent Man's Life and Honour, the Liberty of his Person, and all that he or his Ancestors have got, deserves to be called, in this Case, The *End of Society*, The *Rise of Legislation*, and the *Design of Government*; If men are not willing to admit of as many *Tyrants* as there are *Judges*; if they are not willing to be bawl'd and hunted out of their Lives; if they are not unwilling to be prepared against *false Accusations*, by a knowledge of what will be laid to their *Charge*; if they do not think it unfit to have other Counsel, besides those who are almost in every Trial the eagerest in the Prosecution of the *Prisoner*; if they would not have a matter of that Importance as *Treason* is established with less than the mouths of *Two Witnesses*; if they are not weary of the true intent of being tryed by the *Vicinage*; if they do not think it necessary for the Support of the Government, that a man should always suspect himself in danger of dying by the Hand of the Hangman; if it is not unreasonable, that the Compurgators of a man's *Reputation* should give Weight to their Words by the *Sanction* of an *Oath*. In a Word, if it is not expedient, that a man's Life and all that he has, his Posterity and all that they may have from him, should be precarious and doubtful, in the *Power* of flattering *Sycophants* and malicious *Informers*, at the *Mercy* of *choleriak* and *corrupted* Judges, and submitted to the Consciences of *packed Juries*; then this *Law* is expedient, this *Law* is useful, this *Law* is beneficial and necessary for the Subject.

Thus you see, in Obedience to you I have *scribbled down* some *few* Hints concerning *The Necessity of such a Bill*, The *Reasonableness* of proposing and insisting upon it *at this Time*.

Together *with an Account of its Benefits*.

I am, with all imaginable Friendship and Respect,

Yours

H. N.

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